

CHARTER REVIEW COMMISSION MINUTES

February 7, 2013

The Charter Review Commission met at 5:30 p.m. in the Municipal Building Conference Room on the 7th day of February, 2013, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray and the Norman Public Library at 225 North Webster 48 hours prior to the beginning of the meeting.

PRESENT:

Ms. Jane Abraham
Mr. Thad Balkman
Mr. Trey Bates
Mr. Doug Cubberley, Vice-Chairman
Mr. Harold Heiple, Chairman
Ms. Samantha Kahoe
Mr. Kevin Pipes
Mr. Barry Roberts
Mr. Richard Stawicki

ABSENT:

Mr. Bob Thompson
Ms. Carol Dillingham
Mr. Hal Ezzell
Mr. Ken McBride

STAFF PRESENT:

Mr. Jeff Bryant, City Attorney
Ms. Brenda Hall, City Clerk
Ms. Kathryn Walker, Assistant City Attorney

Mr. Harold Heiple, Chairman, discussed what has transpired since the last Charter Review Commission (CRC) meeting. He said CRC initially requested Staff to list all the topics Council sent for CRC review on the agenda, but after speaking with Staff, he realized the request would require a great deal of background preparation. As a result, the Committee will not see all topics requested by Council on today's agenda as previously discussed. Member Dillingham had suggested evaluating each section of the City Charter with the following series of questions:

1. Is there a perceived problem?
2. If there is a perceived problem, what is it?
3. Who does the CRC need to talk to in order to address the problem?

Member Bates previously asked for background information but expressed a concern, along with Member Thompson, regarding getting so bogged down with Staff presentations that there is not enough time for the CRC to discuss the topic(s). For that reason, Chairman Heiple suggested Staff evaluate and offer input using the three points suggested by Member Dillingham as stated above. Chairman Heiple asked the Committee if moving in that direction would be favorable and requested input from the Committee regarding the meeting process. He felt some of the issues will not be as complicated and/or as lengthy while others will need more discussion versus Staff presentations. Chairman Heiple said Staff is capable of doing the work and the Committee is grateful to Staff for the informative presentation today, but he would prefer the Committee have adequate time to review and discuss the items rather than discuss past CRC history, etc. Member Pipes said he understands the balance between Staff and the Committee and felt the Committee should ask questions and/or submit requests to Staff if more information is needed on a particular topic. Member Bates said he has not served on previous Charter Committees and preferred more background information regarding prior CRC processes because the same issues/topics keep coming back. He felt that for whatever reason, some of the past issues were not resolved with prior CRC recommendations and felt background information and/or results may help with understanding why prior recommendations were not adopted by Council. Member Bates said he preferred all the topics to be placed on the agenda so the Committee could raise and formulate questions that will assist with time efficiency while at the same time allow Staff to research and come back with the pertinent information. He said does not want Staff to do a massive amount of work on every single topic trying to anticipate Committee questions that may arise.

Item 1, continued:

Chairman Heiple asked if placing all the items/topics on the agenda would be easier and more time efficient for Staff and Ms. Brenda Hall, City Clerk, said in order for the CRC to discuss a topic, the topic must be placed on the agenda. She said Staff would accommodate the Committee's wishes and felt all the topics can be listed on the agenda if the purpose is so that the Committee could ask Staff questions, but allow Staff time to research and bring information back to the CRC. Chairman Heiple asked if listing the topics and stating "discussion and possible action," would cause more Staff burden and Mr. Jeff Bryant, City Attorney, felt that would be acceptable. Mr. Bryant said it is always Staff's goal to be prepared to answer any questions or comments regarding agenda items, but there is not enough Staff to prepare information for all the topics; however, if the Committee recognizes that Staff may need to research a topic then putting all the topics on the agenda will be acceptable. He said Staff would accommodate the Committee's desires. Chairman Heiple asked if the Committee favors placing all the topics on the agenda and the Committee agreed. Chairman Heiple said, if necessary, the Committee would allow Staff time to research questions and/or comments.

Chairman Heiple said currently the topics that the CRC will request permission from Council to discuss includes:

1. Article II, Section 1: Increasing the monthly compensation of Councilmembers, and if so what figure or range of figure does the CRC suggest. Chairman Heiple requested that Council submit out of pocket expenses to Brenda Hall, City Clerk. Member Cubberley suggested asking Council's permission to review.
2. Article II, Section 1, in its entirety; however, Chairman Heiple felt and suggested the CRC only review the last paragraph since it regarded the amount of money paid to Council and Member Cubberley agreed stating that would be appropriate; and
3. Review Article II, Section 22, the process of filling Council vacancies - when a Councilmember steps down before their term expires.

Chairman Heiple asked the Committee if any other topics have been identified that will require Council permission to discuss and said the CRC can present Council with a list of topics when the CRC provides Council with quarterly reports. Ms. Hall said the CRC is tentatively scheduled to provide Council with the first quarterly report at the April 2, 2013, study session.

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Item 2, being:

CONSIDERATION OF APPROVAL OF THE CHARTER REVIEW COMMISSION MINUTES.

Member Pipes moved that the minutes be approved and the filing thereof be directed, which motion was duly seconded by Member Stawicki;

Items submitted for the record

1. Charter Revision Committee minutes of December 20, 2012; and
2. Charter Revision Committee minutes of January 3, 2013

and the question being upon approval of the minutes and upon the subsequent directive, a vote was taken with the following result:

Item 2, continued:

YEAS: Members Abraham, Balkman, Bates, Cubberley
Kahoe, Pipes, Roberts, Stawicki, and Chairman
Heiple

NAYES: None

Chairman Heiple declared the motion carried and the minutes approved; and the filing thereof was directed.

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Item 3, being:

CONTINUE DISCUSSION AND POSSIBLE ACTION REGARDING ARTICLE II, SECTION 1, OF THE CITY CHARTER REGARDING COMPENSATION OF COUNCIL MEMBERS BY CHANGING VERBIAGE FROM "COMPENSATION" TO "STIPEND" AND FINALIZE LANGUAGE RECOMMENDATION.

Chairman Heiple said the CRC discussed Article II, Section 1, of the City Charter at the January 3, 2013, CRC meeting regarding compensation of Councilmembers by changing verbiage from compensation to stipend and the CRC voted to recommend to City Council that the word stipend in Article II, Section 1, be substituted for the word compensation in the language as now written. Mr. Jeff Bryant, City Attorney, provided suggested language to the Committee.

Member Stawicki moved the language provided by Staff reflecting the word stipend in Article II, Section 1, be substituted for the word compensation in the language as now written, which motion was duly seconded by Member Kahoe, a vote was taken with the following result:

YEAS: Members Abraham, Balkman, Bates, Cubberley
Kahoe, Pipes, Roberts, Stawicki, and Chairman
Heiple

NAYES: None

Chairman Heiple declared the motion carried and a recommendation to City Council that the language provided by Staff reflecting the word stipend in Article II, Section 1, be substituted for the word compensation in the language as now written was approved.

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Item 4, being:

CONTINUE DISCUSSION AND POSSIBLE ACTION REGARDING ARTICLE III, SECTION 1, OF THE CITY CHARTER REGARDING THE CITY MANAGER REMOVAL PROCESS, ENSURING COMPLIANCE WITH THE OPEN MEETING ACT REQUIREMENTS, AND FINALIZE LANGUAGE RECOMMENDATION.

At the January 3, 2013, CRC meeting Ms. Kathryn Walker, Assistant City Attorney highlighted the current process for City Manager removal and said in 2005, the Charter Review AdHoc Committee recommended a proposed amendment be considered by voters; however, when the ordinance came forward for Council's vote, it was postponed indefinitely.

Item 4, continued:

Mr. Bryant said after the discussion, the CRC expressed concerns about 10th Circuit Court case law and wanted to make certain that the City Manager was clearly an “at-will employee.” He said that the City Manager is an “at-will employee” and highlighted language that clarifies the point. Mr. Bryant said the Committee was also concerned about the process allowing for Open Meetings Act requirements and said the proposed Charter language provides a mechanism for discussion and decision of suspension or removal that complies with Open Meeting Act. Under the proposed language, the initial request (four members may request) for discussion triggers an Executive Session (ES) and possible companion item for immediate suspension. After ES, a removal item may be scheduled with four concurring Councilmembers and the notice and opportunity for the City Manager to publicly respond would remain unchanged.

Mr. Bryant said the City Manager’s contract does not change the status of the City Manager’s employment as dictated in the Charter and typically deals with separation compensation. Immediate suspension, not termination, may be scheduled following the first ES should an act of moral turpitude be in question. Chairman Heiple requested a copy of the current City Manager’s contract, notwithstanding everybody’s best intentions, to satisfy the CRC and said there may not be any contradictions of Open Meetings Act within the contractual provisions. He said he is not aware of this happening in Norman but has seen it happen in other situations and would like to look at that before there is an issue. Mr. Bryant said Staff can provide a copy of the current contract, but he reviewed the contract and felt confident it was in good shape. Chairman Heiple said however in all fairness to the next City Attorney, a prospect will come into the City stating the conditions of the contract language they desire.

Member Bates said the CRC’s charge was to simplify the process for removal of the City Manager and felt the proposed language was making it more complicated. He asked Mr. Bryant to explain the language that reads, “Should at least four (4) Councilmembers desire that a majority of the Council discuss removal or suspension of the City Manager,” and asked where the number four came from and what does that mean. Councilmember Spaulding said that language seems to be in conflict with the rule of three. Chairman Heiple said he deliberately put “four” in the proposed language because it is more than the rule of three, but less than the five (5) that would violate the Open Meetings Act. He said if there are four Councilmembers who want to have the meeting to discuss removal of the City Manager, any City Manager will think twice about whether to even contest it or not. Member Bates said if a specific number of Councilmembers want to talk about dismissal, who calls the meeting? Do four Councilmembers have to sign a petition and turn that in? Mr. Bryant said if five Councilmembers got together outside a meeting and decide they want to have a meeting to fire the City Manager then they have violated the Open Meetings Act and that is what the language is trying to avoid. He said the CRC is trying to clarify if four Councilmembers want that meeting, what would the process be for initiating that meeting? He said Chairman Heiple is proposing a process to file a written request with the City Clerk signed by four members of Council then place a “Manager removal item” on the next regularly scheduled meeting agenda as an ES or on a special meeting agenda to be held not less than seven nor more than fourteen days from the date the City Clerk receives the request. Member Bates asked who decides whether the item is placed on a regularly scheduled meeting agenda or special meeting agenda and Mr. Bryant said it would depend on what the Councilmembers requesting the meeting wanted to do.

Chairman Heiple asked if there is a formal procedure for the rule of three and Ms. Brenda Hall, City Clerk, said the three Councilmembers requesting an item on an agenda submits a written request signed by all three to the City Manager. Member Roberts asked if the rule of three just allows items to be placed on the agenda and Ms. Hall said yes. Chairman Heiple said the rule of three came about due to a previous City Manager telling Council he would decide what goes on the agenda and no one could tell him what goes on the agenda.

Item 4, continued:

Member Kahoe asked if the goal is to simplify the process of terminating the City Manager or simplify the language and Chairman Heiple said the goal is to simplify and clarify language to comply with existing law because what is currently in the Charter violates the Open Meetings Act and current meeting schedules. Mr. Bryant said Staff's primary goal is to comply with the Open Meetings Act and existing Charter language puts Councilmembers into a situation where they could potentially violate the Open Meetings Act especially if there is a majority of Council coming forward with the request to fire the City Manager. He said the Committee needs to create a process to avoid that.

Member Cubberley said if five Councilmembers in an ES are willing to say, "fire the City Manager" then they should be able to go into the open session, explain themselves to the public, and vote on it. He said waiting a week or waiting for another time is not productive and it allows for a tremendous time of uncertainty and politics to get involved. He said if Council is at a point of calling a meeting for the potential termination of the City Manager, the notice is there and is already known by the public. He said the notice to the public is the ES to discuss the removal of the City Manager. He said if there are four dissatisfied Councilmembers willing to sign on the dotted line saying they want a meeting then everyone knows there is tremendous dissatisfaction. Member Bates said language is becoming more complicated because it states the City Manager has 72 hours to demand a reason for termination and the right to be heard publicly in a meeting to be held not less than five days after the demand. Mr. Bryant said existing Charter language already allows for this. He said a prior Charter Committee recommended deleting that language allowing a demand for reasons or a time period to respond in public. Councilmember Cubberley said the language gives rights to the City Manager that is contradictive to being an at-will employee. Mr. Bryant said the difference is substantive rights versus procedural rights. The at-will employee removes any substantive rights in the job, but the existing Charter language already provides procedural rights; however, that language can be removed. Councilmember Castleberry said most attorneys will tell you that when you fire an at-will employee, do not give them a reason because you will get a wrongful termination lawsuit. Chairman Heiple said he never intended reasons be given for the termination and that language has no business in the Charter so the language should be stricken. The Committee said they would like to remove the existing language regarding process and reasons for termination.

Chairman Heiple said he preferred allowing a gap of seven to fourteen days between the ES and termination and asked members their opinion on whether or not the City Manager should be suspended or fired directly after the ES. Members Roberts and Abraham preferred allowing a gap of time between the ES and termination. Member Bates said the risk in allowing a gap time is that it becomes political and he preferred immediate action to suspend or terminate. Member Stawicki preferred an immediate vote on suspension versus firing and suspension would give Council more time to decide on termination. Members Pipes, Bates, and Kahoe felt Council should have the flexibility to suspend or terminate immediately. Chairman Heiple said there appears to be a consensus to allow flexibility for Council to suspend or terminate after the ES.

Mr. Bryant asked if everyone agreed four Councilmembers are needed to call for the ES and Councilmember Cubberley said this is a very disruptive step to take and he would not support a rule of three. Chairman Heiple asked Staff to prepare language and forward that language to the Committee so it can be voted on at the next meeting.

Mr. Bryant summarized the proposal for the purpose of minutes and clarity. He said four Councilmembers will need to request an ES with an item following the ES that can be suspension or termination. Existing language regarding the City Manager's demand for reasons and response period will be stricken and the last sentence will be moved up.

Item 5, being:

BEGIN DISCUSSION AND POSSIBLE ACTION REGARDING ARTICLE III, SECTION 6, OF THE CITY CHARTER REGARDING CREATING A MECHANISM UNDER WHICH THE CITY COUNCIL COULD REQUEST INFORMATION REGARDING A SPECIFIC CITY DEPARTMENT.

Chairman Heiple asked Member Cubberley if language proposed in 2006 that reads, "Provided the Council may, by majority vote, direct the City Manager to investigate and report to the Council with respect to specific concerns or questions regarding performance and/or the operation of any Department" would meet what Council was looking for at that time. Member Cubberley said at the time Council was having problems with Department Heads and the public does not understand that Council has no purview over Department Heads. He said when there are problems in those departments and they are not getting resolved, people go to Councilmembers and say, "Do something." He said when Council goes to a City Manager who is less than responsive there is little recourse. He said the Charter Committee at that time was trying to find a balance because Council does not want the day to day responsibilities, but at the same time wants to be able to get the City Manager to respond to concerns from Council.

Ms. Walker highlighted Oklahoma Statutes on Council/Manager forms of government, what the duties of Council are, what the duties of the City Manager are, and how that gets separated. Chairman Heiple said the Statute covers the problem, but it is not in the Charter and putting it in the Charter may solve the problem to a degree.

Chairman Heiple said the language is ambiguous when it states "report to the Council" because if the issue concerned personnel, the City Manager could say that it regarded personnel and he would report to Council in ES, not an open session.

He asked if anyone had an objection or question about the language and Councilmember Castleberry said the Statute states the Council has the power to regulate salaries and wages, but right now the City Manager handles arbitrations and negotiations with unions so he is the one who determines salaries and wages. He asked if Council should be doing that or is that just saying Council can do it and Council is delegating it to the City Manager. Mr. Bryant said it is done through an appropriation when Council adopts the budget. Councilmember Castleberry said if the union requested a 3% increase would Council approve the appropriation for the increase and Mr. Bryant said different Councils approach it differently. He said recently, Council had a discussion with the City Manager about the appropriate approach on whether the Council should budget money for salaries when they adopt the budget or wait until after negotiations are complete and approve a supplemental appropriation. He said in the past, Council has budgeted money for vacant positions so there is enough money from those vacancies to fund the wage increases.

Member Pipes felt more work needed to be done on the language and Member Stawicki agreed. Chairman Heiple said language would be discussed further at the next meeting.

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Item 6, being:

BEGIN DISCUSSION AND POSSIBLE ACTION REGARDING ARTICLE III, SECTION 7, OF THE CITY CHARTER REGARDING CREATING A REQUIREMENT THAT A CITY EMPLOYEE TAKE A LEAVE OF ABSENCE TO RUN FOR PARTISAN POLITICAL OFFICE.

Chairman Heiple asked if members favored the question, opposed the question, or needed more information about the question. Member Pipes asked what other cities in Oklahoma the size of Norman do.

Chairman Heiple suggested a partisan political office would not include a District Judge race.

Member Stawicki said if you are a State employee you have to take a leave of absence to run for a partisan office. Mr. Bryant said there is language in the Charter that prohibits a City employee from running for a City office.

Member Bates said he would like to know what teachers have to do if they run for a partisan political office.

Mr. Heiple said more information would be provided at the next meeting for further discussion.

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Item 7, being:

ADJOURNMENT.

The meeting was adjourned at 6:37 p.m.